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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SAM TAA,

Defendant and Appellant.

D059972

(Super. Ct. No. SCD232187)

APPEAL from a judgment of the Superior Court of San Diego County, Frank A. Brown, Judge. Affirmed.

A jury convicted Sam Taa of corporal injury to a cohabitant (count 1; Pen. Code, § 273.5),¹ and assault with force likely to cause great bodily injury (count 2; former Pen. Code, § 245, subd. (a)(1)). The jury found true the allegations appended to counts 1 and 2 that he personally inflicted great bodily injury on the victim within the meaning of sections 12022.7, subdivision (a), and 1192.7, subdivision (c)(8). The jury found Taa not

¹ All further statutory references are to the Penal Code unless otherwise specified.

guilty of cruelty to a child by endangering health (count 3; § 273a, subd. (b)). The court denied Taa's request to dismiss his prior strike conviction allegation and sentenced him to a prison term of 11 years.

Taa's sole contention on appeal is that the trial court abused its sentencing discretion in denying his request to dismiss the prior strike conviction allegation. We affirm the judgment.

FACTS

A. The Present Offense

On January 29, 2011, Taa and his girlfriend, Connie Greybull, had a physical fight at their residence. Taa and Greybull provided inconsistent statements at trial regarding what happened that evening, but they both sustained injuries. A police officer who arrived at the residence noticed cuts on Taa's face and arms, and several sources of evidence confirmed that Taa punched Greybull multiple times in the face. Taa's attack on Greybull caused her to involuntarily defecate in her pants. Examinations performed on Greybull showed serious injuries, including a swollen brain and blood in different areas of the brain. The presence of blood in several areas of Greybull's brain could cause a stroke or serious physical impairment.

B. Taa's Criminal History

Taa's prior strike conviction was a 1998 conviction for assault with force likely to cause great bodily injury (former Pen. Code, § 245, subd. (a)(1)) and personal infliction of great bodily injury (§1192.7, subd. (c)(8)). Taa also has a significant criminal history

following his prior strike, including two felony convictions and multiple misdemeanor convictions.

In 2005, Taa was convicted of false imprisonment by force or violence (§§ 236, 237) in connection with a domestic violence incident. In that case, Taa threw rocks at his girlfriend's home, hitting her in the stomach with one of them. He then forced entry into her house and punched her in the face when she tried to call the police. Taa was sentenced to 32 months in prison. Taa was convicted of possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) in 2007.

Taa's misdemeanor convictions are interspersed throughout his criminal record. In 2000 and 2003, Taa was convicted of disturbing the peace (§ 415, subd. (a)) and received three years of summary probation for each conviction. In 2003, Taa was convicted of driving with a blood alcohol concentration over 0.08% (Veh. Code, § 23152, subd. (b)) for which he served 180 days. In 2004 and 2009, Taa was convicted of resisting arrest (§ 148, subd. (a)(1)) and received summary probation for each conviction. Through the commission of these misdemeanors and felonies, Taa consistently violated the terms of his formal and summary grants of probation.

C. Request to Dismiss

Taa requested dismissal of his prior strike conviction allegation in the interests of justice under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. In his request to dismiss, Taa argued: (1) he was a changed man, (2) he was remorseful, (3) he only had one prior domestic violence case and the victim in that case sustained minimal injuries,

and (4) in the current case he was acting in self-defense and the facts of the case remain unclear.

In denying Taa's request, the court engaged in a thorough analysis before making its decision. The court noted that Taa was remorseful and a "good guy" "when . . . not impaired by alcohol or drugs." However, the court recognized that Taa had an extensive criminal record with a theme of anger issues and alcohol and drug abuse. The court also considered the serious injuries Taa inflicted on Greybull in the present case. Considering the aggravating factors, the court chose not to dismiss the strike allegation, but selected the middle term of three years for counts 1 and 2, doubled under the three strikes law (§ 667, subds. (b)-(i)), and struck the allegations appended to those counts.² The court also sentenced Taa to one year for the prison prior, and five years for the serious felony prior, for a total term of 11 years.

DISCUSSION

Taa contends the court abused its discretion by denying his request to dismiss his prior strike conviction allegation. He claims his criminal record is not the type contemplated by the three strikes law and he is not the type of recidivist offender targeted by the law.

The trial court has limited discretion under section 1385 to dismiss prior serious or violent felony conviction allegations in cases brought under the three strikes law. (*People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at pp. 529-530.) The language of

² The sentence imposed for count 2 was stayed (§ 654).

section 1385 permits dismissals "in furtherance of justice." "The striking of a prior serious felony conviction is not a routine matter. It is an extraordinary exercise of discretion, and is very much like setting aside a judgment of conviction after trial." (*People v. Jackson* (1986) 178 Cal.App.3d 694, 697-698; *People v. McGlothlin* (1998) 67 Cal.App.4th 468, 474.)

The question is "whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*); *People v. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony*).)

We review the trial court's denial of a *Romero* motion for abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 376.) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at p. 377.)

The court in this case thoroughly contemplated its discretion to dismiss the prior strike conviction allegation. In deciding not to exercise that discretion, the court considered Taa's criminal record. The court observed that Taa had not "been able to remain law-abiding for more than a couple of years" and his past offenses have a "common thread" of Taa abusing alcohol and acting out with anger. This type of

behavior is the kind of recidivism the three strikes law seeks to address. (*Williams, supra*, 17 Cal.4th at pp. 162-163.)

The court also considered the lack of clarity of the facts of Taa's current offense. The court recognized that it was "bothersome" to not know who initiated the fight between Taa and Greybull. However, it noted that Taa showed signs of guilt when the police arrived at the scene. The court also reiterated that Taa had committed similar offenses because of his alcohol abuse. This analysis shows the court has fully exercised its discretion in evaluating "the nature and circumstances" of the present offense. (*Williams, supra*, 17 Cal.4th at p. 161.)

Based on the factors considered by the court, we cannot conclude that its "decision [was] so irrational or arbitrary that no reasonable person could agree with it." (*Carmony, supra*, 33 Cal.4th at p. 377.) In denying Taa's request, the court properly considered the nature and circumstances of his prior and present offenses, and his criminal history. (*Williams, supra*, 17 Cal.4th at p. 161.) We conclude the court did not abuse its discretion by denying the request to dismiss the prior strike conviction allegation.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.